

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
 )  
Connect America Fund ) WC Docket No. 10-90  
 )  
Emergency Petition of Virgin Islands Telephone )  
Corp. dba Viya for Wireline Hurricane Restoration )  
Support )  
 )

To: The Commission

**EMERGENCY PETITION**

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**EMERGENCY PETITION**

Virgin Islands Telephone Corporation dba Viya (fka Vitelco) (“Viya”) respectfully requests that the Commission provide emergency Connect America Fund (“CAF”) support for the restoration of essential services in the United States Virgin Islands (“USVI”), an insular U.S. Territory. As a result of devastation by Hurricanes Irma and Maria, the vast majority of the citizens in the USVI currently lack wireline voice or wireline broadband services. Petitioner requests that the Commission make available a supplemental, one-time infusion of up to \$45 million to be used by Viya to restore its voice and broadband network (“Viya Network”) and thereby enable Viya to resume providing essential voice and broadband services to customers in the USVI.

**I. INTRODUCTION AND SUMMARY**

Viya will use the requested \$45 million in emergency CAF support, in conjunction with private capital, insurance proceeds, and some portion of its frozen CAF Phase II funding,<sup>1</sup> to

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<sup>1</sup> Through CAF Phase II, Viya receives approximately \$16.3 million per year in frozen support, which it elected, as an insular carrier, in lieu of model-based support. Prior to the hurricanes, Viya was finalizing a plan to utilize this support to expand the deployment of its wireline broadband network; increase broadband speeds; retire debt and capital investment used to fund deployment of the HFC network in the first instance; fund a portion of the operational and

restore the decimated Viya Network to its pre-hurricane condition. Viya expects to complete this restoration within approximately twelve months following the disbursement of the requested funds. This support will be subject to rigorous verification requirements to ensure the support is used for the purposes for which it was intended and to guard against waste, fraud, and abuse, as discussed below.

Restoration of the Viya Network will ensure the provision of essential services to the population of the USVI, which currently is almost entirely deprived of wireline voice and wireline broadband services. As such, it will provide a much-needed foundation for broader economic and institutional recovery in the Territory. With the requested funding, Viya expects to restore the network to at least pre-hurricane levels of capability and coverage within twelve months.<sup>2</sup> From there, Viya can once again turn its focus to the network improvements that Viya intended to pursue before this disaster, as well as extending the reach of the Viya Network to any remaining unserved customers. Without the requested funding, it is unclear how long it will take Viya to complete these restoration efforts, how Viya will be able to fund such efforts, or even whether the infrastructure can be economically restored to pre-disaster levels.

In the wake of Hurricanes Irma and Maria, Chairman Pai affirmed that “the FCC stands ready to do whatever we can to help with th[e] task” of restoring the hurricane-damaged

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maintenance costs of the network on an ongoing basis; and preserve affordable rates in the face of the unusually high costs of serving the USVI market. *See* Letter from L. Charles Keller, Counsel to Viya, to Marlene H. Dortch, Secretary, WC Docket No. 10-90 (filed Nov. 15, 2017) (describing pre-hurricane plans for use of support).

<sup>2</sup> Because of the urgency of this restoration effort, Viya will make every attempt to restore service sooner than this, and will inform the Commission if it is able to do so.

communications networks.<sup>3</sup> In Viya’s interactions with the Commission over the past two months in connection with administrative matters related to the hurricanes, Viya can attest that the Commission has met this commitment by the Chairman. After surveying the damage to neighboring Puerto Rico, Chairman Pai further stated: “I believe that more funding will be needed in the months to come.”<sup>4</sup> Viya posits that the same is true of the USVI, and this Petition provides a vehicle for the Commission to meet this further commitment by Chairman Pai.<sup>5</sup> In order to allow Viya to make decisive plans for its network restoration efforts and properly scale those efforts, Viya urges the Commission to act on this Petition as quickly as possible.

## **I. BACKGROUND**

### **A. The USVI and Viya**

The USVI is a U.S. Territory located in the Caribbean Sea approximately 1,100 miles southeast of Florida and 40 miles east of Puerto Rico. It is comprised of three main islands, St. Thomas, St. John, and St. Croix. Although St. Thomas and St. John are located in close proximity to one another, St. Croix lies 40 miles south of them. The three islands have a

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<sup>3</sup> See FCC Press Release, “Chairman Pai Statement on Hurricane Maria” (Sept. 21, 2017), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-346833A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-346833A1.pdf).

<sup>4</sup> “Chairman Pai Meets With Officials in Puerto Rico,” Statement (Nov. 7, 2017), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db1107/DOC-347634A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1107/DOC-347634A1.pdf).

<sup>5</sup> Viya’s wireless affiliates also have petitioned the Commission to provide an additional \$50 million of one-time support for the recovery of wireless networks in the USVI. See Viya Wireless, *Emergency Petition for Supplemental Universal Service Support to Restore Wireless Networks in Hurricane-Devastated Insular Areas*, (filed Oct. 5, 2017), <https://ecfsapi.fcc.gov/file/100583894910/Viya%20Wireless%20Emergency%20Insular%20Wireless%20Relief%20Petition.pdf>. That petition covers only wireless facilities, while the instant Petition addresses only the voice and broadband Viya Network. Consequently, there is no overlap between the two requests for relief.

combined area of about 134 square miles and, before the hurricanes, the USVI counted about 107,000 residents.

Even prior to the hurricanes, economic conditions in the USVI were challenging. Compared to the overall U.S. averages, the median household income in the Territory was thirty percent lower, unemployment was twice as high, and poverty was three times as high.<sup>6</sup> The Territorial government also had per-capita debt that is one-third higher than Puerto Rico's.<sup>7</sup> There is every expectation that the effects of the hurricanes, including reconstruction costs, loss of jobs, and diminished tourism, will substantially worsen the USVI's economic condition over the coming months and years.

Viya is the incumbent local exchange carrier in the USVI. The Viya companies also provide long distance, broadband Internet access, and multichannel video services. ATN International, Inc. ("ATN") acquired Viya in July 2016. Under its prior ownership, Viya constructed a hybrid fiber-coaxial cable ("HFC") from 2011 to 2015 at a cost of approximately \$125 million.<sup>8</sup> The HFC network replaced an old and degraded copper network and permitted Viya to make available broadband Internet access at CAF Phase II qualifying speeds of at least 10 Mbps download and 1 Mbps upload ("10/1"). Prior to the hurricanes, Viya's HFC network offered at least 10/1 service to approximately 97 percent of approximately 48,000 residential and

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<sup>6</sup> See CIA, The World Factbook, Virgin Islands, Economy – overview, <https://www.cia.gov/library/publications/the-world-factbook/geos/vq.html>.

<sup>7</sup> See, e.g., Simone Barbeau, "United States Virgin Islands Risks Capsizing Under Weight of Debt," *Forbes* (Jan. 23, 2017), <https://www.forbes.com/sites/debtwire/2017/01/23/united-states-virgin-islands-risks-capsizing-under-weight-of-debt/#5516f3901821>. Puerto Rico's governmental debt ultimately caused Puerto Rico to seek a form of bankruptcy protection. See Mary Williams Walsh, "Puerto Rico Declares a Form of Bankruptcy" *New York Times* (May 3, 2017), [https://www.nytimes.com/2017/05/03/business/dealbook/puerto-rico-debt.html?\\_r=0](https://www.nytimes.com/2017/05/03/business/dealbook/puerto-rico-debt.html?_r=0).

<sup>8</sup> Other affiliated entities also provide wireless services and operate a local television station.

business locations in the USVI, and Viya was the only fixed-line retail broadband provider in the USVI offering 10/1 service.

Most of Viya's HFC plant was aerial. Although buried plant is less vulnerable to weather damage, burying cable in the USVI is significantly costlier and more difficult than on the mainland. In addition, the cost of all equipment is higher because all products must be transported to the USVI by boat or air and are subject to additional duties and import processes when they are brought from the mainland to the USVI. Further, there is a shortage of skilled labor in the USVI, which slows deployment times and increases labor costs relative to the mainland U.S. because certain skilled labor must be imported. Finally and most importantly, the USVI terrain also substantially increases the cost of burying cable. In low-lying areas of the USVI, the water table is so high that burying cable is effectively a submarine installation, while higher elevations are typically solid rock that is extraordinarily costly to trench. Moreover, the USVI is also subject to frequent seismic activity that leads to cable cuts.

## **B. Hurricanes Irma and Maria**

On September 6, 2017, Hurricane Irma hit the USVI with sustained 185-mile-an-hour winds, toppling trees and power lines, damaging and destroying structures, and causing island-wide electrical outages across much of the islands that have lasted nearly three months already.<sup>9</sup> Various news reports identified Hurricane Irma as one of the strongest storms ever recorded in the Atlantic Ocean. It resulted in at least 84 deaths, including 45 across the Caribbean and 39 in the United States.<sup>10</sup> Hurricane Irma massively damaged the wireline communications

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<sup>9</sup> See, e.g., Camilla Schick et al., "The Storm Reaches Puerto Rico: 'There Is Nothing Like This,'" New York Times (Sept. 6, 2017), <https://www.nytimes.com/2017/09/06/world/americas/hurricane-irma-update.html>.

<sup>10</sup> See e.g., James Oliphant, "About 1.5 million, mostly in Florida, without power in Irma's wake," Reuters (Sept. 15, 2017), <https://www.reuters.com/article/us-storm-irma/about-1-5->

infrastructure on St. Thomas and St. John, as well as the commercial power network upon which the Viya Network depends. It also damaged infrastructure on St. Croix. USVI residents on these islands also lost access to adequate water, electricity, and other basic services.<sup>11</sup>

President Trump declared the USVI to be a major disaster area on September 7, 2017.<sup>12</sup> Further, as additional reports detailed the extent of destruction, the President subsequently expanded the disaster relief resources available under this declaration on September 10, 2017.<sup>13</sup>

Just two weeks after Hurricane Irma struck, on September 20, 2017, Hurricane Maria decimated the USVI and Puerto Rico. St. Croix was in the powerful eyewall of the storm and therefore received the most damage, but the storm also did extensive additional damage to St. Thomas and St. John, which were in the process of beginning their recovery from the damage inflicted by Hurricane Irma.<sup>14</sup> Hurricane Maria's 175-mile-per-hour sustained winds destroyed much of the electrical and communications infrastructure on St. Croix, as well as undoing the

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[million-mostly-in-florida-without-power-in-irmas-wake-idUSKCN1BQ1C6](#); Madison Park, Emanuella Grinberg, & Ray Sanchez, "Hurricane Irma leaves 'nuclear landscape' in Caribbean," Cable News Network (Sept. 13, 2017), <http://www.cnn.com/2017/09/13/americas/irma-impact-caribbean/index.html>.

<sup>11</sup> See, e.g., Brianna Sacks & Cora Lewis, "'It's Like A Bomb Went Off': What Life Is Like On The US Virgin Islands After Hurricane Irma," BuzzFeed (Sept. 11, 2017), [https://www.buzzfeed.com/briannasacks/irma-devastes-us-virgin-islands?utm\\_term=.moxy7wMO#.qa6gQ9WRq](https://www.buzzfeed.com/briannasacks/irma-devastes-us-virgin-islands?utm_term=.moxy7wMO#.qa6gQ9WRq).

<sup>12</sup> Press Release, President Donald J. Trump Approves U.S. Virgin Islands Disaster Declaration, White House Press Office (Sept. 7, 2017), <https://www.whitehouse.gov/the-press-office/2017/09/07/president-donald-j-trump-approves-us-virgin-islands-disaster-declaration>.

<sup>13</sup> Press Release, President Donald J. Trump Amends U.S. Virgin Islands Disaster Declaration, White House Press Office (Sept. 10, 2017), <https://www.whitehouse.gov/the-press-office/2017/09/10/president-donald-j-trump-amends-us-virgin-islands-disaster-declaration>.

<sup>14</sup> Travis Fedschun & Nicole Darrah, "Hurricane Maria surges toward Puerto Rico, US Virgin Islands," Fox News (Sept. 20, 2017), <http://www.foxnews.com/world/2017/09/20/hurricane-maria-takes-aim-at-puerto-rico-us-virgin-islands-as-category-5-storm-strengthens.html>.



restoration efforts undertaken by Viya on St. Thomas and St. John following Hurricane Irma. Shortly after the hurricane, the Commission noted that it had received reports that in the USVI and Puerto Rico “large percentages of consumers are without either cable services or wireline service (one company reported that 100% of its consumers are out of service due to lack of commercial power). There are at least 18 switches that are out of service due to either SS7 or toll isolation.”<sup>15</sup>

In anticipation of Hurricane Maria, President Trump approved a USVI declaration of emergency on September 18.<sup>16</sup> In addition, after Hurricane Maria hit the USVI, he declared USVI to be a major disaster area on September 21, 2017, thereby qualifying the USVI to receive federal relief resources.<sup>17</sup>

In the three months since the storm, life in the USVI remains extremely difficult. A substantial majority of the islands remain without power and many residents lack access to basic services and needs. Many residents remain displaced from their homes, securing food and shelter on a daily basis remains challenging, and many roads remain impassible. The tourism industry, which previously was the driving economic force on the islands, has been significantly impacted. For example, the three largest hotels in the USVI are closed for repairs until 2019 and have laid off their staffs. Remaining hotels are largely occupied by relief workers. Many

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<sup>15</sup> “Communications Status Report for Areas Impacted by Hurricane Maria” (Sept. 25, 2017) at 7.

<sup>16</sup> Press Release, President Donald J. Trump Approves U.S. Virgin Islands Emergency Declaration, White House Press Office (Sept. 18, 2017), <https://www.whitehouse.gov/the-press-office/2017/09/18/president-donald-j-trump-approves-us-virgin-islands-emergency>.

<sup>17</sup> Press Release, President Donald J. Trump Approves U.S. Virgin Islands Disaster Declaration, White House Press Office (Sept. 21, 2017), <https://www.whitehouse.gov/the-press-office/2017/09/21/president-donald-j-trump-approves-us-virgin-islands-disaster-declaration>. Federal disaster relief resources are not generally available to for-profit companies.

restaurants and other local businesses remain closed. Although many schools have re-opened, at least three schools have been condemned and others are operating in split shifts to accommodate students. The two hospitals in the USVI also have been substantially ruined, and anyone needing significant medical care has been evacuated. The airports were seriously damaged and air service to and from the islands remains limited.

### **C. Hurricane Damage to the Viya Network and Viya's Restoration Efforts**

Hurricanes Irma and Maria caused widespread major damage to Viya's HFC network. The storms toppled or broke a large number of poles, pulled down cables, ripped out customer drops and tore apart homes, which subjected customer premises equipment to weather damage. Wind and water damage from the storms destroyed or disabled the majority of Viya's network outside plant. In addition to the destruction wrought by the hurricanes themselves, efforts to clear roads and repair structures have resulted in countless cable cuts in the weeks since the storm occurred, and these cuts continue despite Viya's best efforts to coordinate with the power utility and other restoration crews.

Further compounding the difficulty of restoration efforts, electric power remains unavailable throughout much of the USVI. As a result, Viya has been utilizing for weeks at a time generators that only are intended to be run continuously for a few days, which has caused repeated generator failures. In addition, some of Viya's generators and fuel stores have been stolen. Also, there remains a general shortage of repair equipment and qualified repair crews in the USVI, and finding adequate food and shelter for repair crews is an ongoing challenge.

As a result of all of the foregoing, as of mid-November Viya only was able to provide wireline voice or wireline broadband service to a very small fraction of its pre-hurricane

customers.<sup>18</sup> But it has been difficult for Viya to discern the precise extent to which outages result from network damage as opposed to lack of electrical power because the Viya Network requires powered customer premises equipment and communications signal distribution facilities, and the USVI electrical grid has not yet been adequately restored. In recent weeks, however, Viya has conducted a targeted and organized visual inspection of the entirety of its HFC backbone on all three islands in order to determine the extent of the damage to the network. Following these inspections, Viya has formulated a more comprehensive assessment of the scope of the damage, as well as projections for its restoration.

In its third quarter 2017 SEC Form 10-Q, Viya's parent company ATN reported a loss of \$36.6 million, of which about \$35 million was to write off the *depreciated* value of network assets destroyed in the storms. As Viya's SEC disclosure also indicated, however, the cost to restore the network will be substantially greater than the depreciated value of the destroyed physical assets because the cost to purchase *undepreciated* replacement equipment will be much higher, and the cost of the labor needed for Viya's restoration efforts will be substantial.

## **II. REQUEST FOR RELIEF**

### **A. Amount and Use of Emergency Funding**

Following Viya's assessment of scope of the damage to its network, Viya began an assessment of the work that needs to be done in order to return the Viya Network to at least its

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<sup>18</sup> In order to restore some level of service as rapidly as possible, immediately after the storms Viya began to provide stopgap connectivity solutions using its affiliates' mobile wireless networks. Viya's wireless affiliates worked to restore wireless sites as quickly as possible and continue these efforts today. Viya also has been distributing free MiFi devices to customers that lost wireline access and expects to have given away thousands of MiFi devices by the end of 2017. The MiFi devices are intended to serve solely as an interim and/or backup solution until the Viya Network is restored because wireless bandwidth is more limited than the bandwidth available over Viya's HFC network. In addition, Viya deployed nearly 30 free WiFi access points at public locations to enable people to connect to the Internet as needed in the absence of wireline service.

pre-hurricane capabilities and coverage. This included an estimate of the replacement cost of network infrastructure that was a total loss and an estimate of repair costs for network infrastructure that was damaged but not destroyed. Viya has estimated that the cost of restoring its network to pre-hurricane conditions will be \$45 million. This consists largely of equipment and labor costs in connection with:

- cleaning up and removing the damaged and destroyed parts of the Viya network;
- replacing and rebuilding the physical outside plant (poles, fiber, nodes, coaxial cable, etc.);
- repairing facilities that are damaged but reparable;
- restoring service drops to residents' and businesses' premises; and
- replacing damaged and destroyed customer premise equipment.

Viya respectfully requests that the Commission make available hurricane restoration universal service support up to a maximum of \$45 million. With the requested funding, Viya expects to restore the Viya Network to at least pre-hurricane levels,<sup>19</sup> and to do so within twelve months. From there, Viya can once again turn its focus to any remaining unserved customers and the network improvements that Viya was working on prior to this disaster. Other adequate funding sources do not appear to be available.

ATN had obtained the maximum amount of insurance coverage that underwriters would provide in the USVI, about \$34 million, which was to cover replacement costs of damaged property, extra expenses incurred due to the storms, and business interruption. However, the insurance proceeds will not even fully cover business interruption expenses resulting from

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<sup>19</sup> As noted above, before the hurricanes, the Viya Network addressed approximately 97 percent of 48,000 residential and business locations (i.e., approximately 46,500 locations) with availability of broadband speeds of at least 10/1.

Hurricanes Irma and Maria. Thus, no insurance proceeds are available to cover network restoration.

In addition, Viya's existing stream of CAF Phase II high-cost universal service support was already fully accounted for before the storms and in light of the high cost of operating in the USVI. Viya intended to use these funds to finish retiring the debt financing and capital infusion that paid for the original \$125 million investment used to construct the HFC network, complete the expansion of the network to unserved locations, increase broadband speeds, and fund ongoing network maintenance, all while maintaining rates at affordable levels.

Further, the company's medium- to long-term financial outlook is affected by the significant economic harm that the hurricanes have done to the USVI economy. Viya's high fixed costs to operate its business, including labor, rents, licenses, and debt service, among other fixed costs, are largely unchanged despite much of the Viya Network being inoperable following the hurricanes. Yet Viya's revenues have fallen precipitously because Viya does not charge customers for services that it remains unable to provide. And, as discussed above, Viya will incur substantial new and unbudgeted network restoration costs. These factors limit the amount of additional capital that Viya can raise from the capital markets.

Thus, without the requested funding, it is unclear how long it will take Viya to complete its network restoration efforts; how Viya will be able to fund these efforts; or even whether the Viya Network can be economically restored to pre-disaster levels. Therefore, to enable Viya to effectively plan its network restoration efforts, Viya urges the Commission to act on this Petition as quickly as possible.

## **B. Accountability Assurances**

If the Commission provides the requested funding, Viya commits to provide an accounting to the Commission and the Universal Service Administrative Company ("USAC") of

its use of these funds for the purposes for which they are intended, including all appropriate documentation. The vast majority of Viya's restoration effort will involve work by outside contractors hired by Viya or ATN and/or materials for network restoration. As a result, Viya will be in a position to provide invoices clearly showing the equipment that was purchased and work that was performed. Viya will only retain funding for equipment and labor that it can document as discussed below. Viya also commits that it will not retain funding for any network restoration costs that were also reimbursed from any other sources, such as insurance, and is prepared to provide a certification to this effect.

Viya proposes that the Commission provide a lump sum disbursement of \$45 million on or about January 1, 2018, conditioned on the requirement that Viya provide documentation of its spending of the money to the Commission and USAC within fourteen months of the disbursement—i.e., two months after Viya expects to complete its restoration efforts. Viya commits to obtaining an irrevocable standby letter of credit to secure its use of the funding, consistent with the CAF rules.<sup>20</sup> By March 1, 2019, Viya will provide the Commission with invoices to document the use of the funding for the purposes for which it was intended. The Commission should review this documentation and, upon confirmation of the appropriate use of the funding, authorize release of the letter of credit.<sup>21</sup> Viya will return any funding that it cannot so document, and its obligation to do so will be secured by the letter of credit.

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<sup>20</sup> Viya will secure the disbursements of funds with irrevocable standby letters of credit consistent with 47 C.F.R. § 54.315(c).

<sup>21</sup> Viya respectfully requests that the Commission authorize release of the letter of credit within six months of Viya's submission of documentation of the use of funding.

**C. The Commission Has the Authority to Grant This Relief, Which Will Serve the Public Interest**

The Commission has the authority to provide this support under Section 254 of the Communications Act of 1934, as amended, and this support will help fulfill the Commission's obligations under the Act. Consistent with Section 254(e), this support will be used for the provision, upgrade, and maintenance, of voice and broadband services that meet the definition of universal service prescribed by the Commission.<sup>22</sup>

This is a particularly compelling use of available CAF support. Viya is not requesting funding to offset the cost of deploying next generation services to an already adequately served area. Rather, as mandated by the statute, Viya will use the funding requested in this Petition to ensure that consumers and businesses in the USVI have access to basic and essential supported services at just, reasonable, and affordable rates.<sup>23</sup> Viya will use the requested support to once again provide the USVI, an insular area of the United States that is currently largely unserved by wireline voice or wireline broadband facilities, with access to telecommunications and information services that are reasonably comparable to those available in U.S. urban areas.<sup>24</sup>

For all the reasons set forth herein, grant of this Petition also will serve the public interest. Restoration of the Viya Network will ensure essential voice and broadband services are once again available to the population of the USVI and will provide a much-needed foundation for broader economic and institutional recovery in the Territory. For example, businesses will once again have a reliable means of marketing their services to customers on and off the islands

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<sup>22</sup> 47 U.S.C. § 254(c)(1); 47 C.F.R. § 54.101.

<sup>23</sup> 47 U.S.C. § 254(b)(1), (3).

<sup>24</sup> 47 U.S.C. § 254(b)(3).

and processing electronic payments. Schools and libraries will once again be able to provide twenty-first century learning opportunities to students and citizens affected by the storms. And the U.S. and Territorial Governments once again will be able to interact with citizens electronically, facilitating civic participation and the provision of badly needed governmental services.



### III. CONCLUSION

As discussed herein, Viya respectfully requests that the Commission provide \$45 million in universal service funding for restoration of the Viya Network following Hurricanes Irma and Maria subject to the conditions and protections discussed above.

Respectfully submitted,

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